

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STATE NATIONAL INSURANCE COMPANY,

Plaintiff,

-v-

CERTAIN INTERESTED UNDERWRITERS AT
LLOYD’S LONDON,

Defendant.
-----X

22-cv-2686 (LJL)

OPINION AND ORDER

LEWIS J. LIMAN, United States District Judge:

Defendant Certain Interested Underwriters at Lloyd’s London (“Underwriters”) moves, pursuant to Federal Rule of Civil Procedure 14, for an Order granting it leave to file a third-party complaint against Chubb National Insurance Company (“Chubb”) and Illinois Union Insurance Company (“Illinois Union”). Dkt. No. 17. For the following reasons, the motion is denied

BACKGROUND

The first-party action is brought by State National Insurance Company (“State”) against Underwriters and grows out of an injury an individual named Domingo Moncion (“Claimant”) alleges he suffered on November 13, 2019 (the “Accident”), while he was working on a jobsite located in the Bronx, New York (the “Project”).¹ Dkt. No. 1 ¶ 6. Claimant was employed by L&T 17 Corp. (“L&T”), which had been subcontracted by a company named MT Ironworks Inc. (“MT”) to perform certain work at the Project. *Id.* ¶¶ 6, 8, 15. MT, in turn, was performing its work at the Project, pursuant to a contract with Court Street Builders, LLC (“Court Street”) and

¹ For purposes of this motion, the Court accepts the allegations of the complaint in the first-party action as true.

Prospect Living LLC (“Prospect Living”). *Id.* ¶¶ 10–13, 16. After the Accident, Claimant instituted suit in New York Supreme Court, Bronx County, against Court Street and Prospect Living. *Id.* ¶ 7. Court Street and Prospect Living then instituted a third-party action against MT. *Id.* ¶ 8. Claimant then amended his complaint to name MT as a direct defendant. *Id.* ¶ 9.

Court Street and Prospect Living are the named insureds on a commercial general insurance policy issued by State which provides insurance coverage for Court Street and Prospect Living for the Accident and for Claimant’s lawsuit (the “Suit”). *Id.* ¶¶ 18–19. State is defending Court Street and Prospect Living in the Suit and has agreed to indemnify them for the Suit. *Id.* ¶ 20. MT is the named insured under a policy of insurance issued by Underwriters, who are providing a defense to MT in the Suit and have agreed to indemnify MT in the Suit. *Id.* ¶¶ 22–23.

The contract between Court Street and MT required MT to procure general liability insurance with minimum limits of \$1 million per occurrence and \$2 million in the aggregate, naming Court Street and Prospect Living as additional insureds, on a primary and non-contributory basis. *Id.* ¶ 14. In the first-party action, State claims that it tendered requests to Underwriters on behalf of Court Street and Prospect Living to provide additional insured coverage to and defend and indemnify Court Street and Prospect Living on a primary and non-contributory basis based on Underwriters’ alleged obligation to provide Court Street and Prospect Living additional insured coverage. *Id.* ¶¶ 24–26. State claims Underwriters failed to respond to the tenders. *Id.* ¶ 27. State seeks a declaratory judgment that Underwriters must defend and indemnify Court Street and Prospect Living in connection with the Accident and the Suit, *id.* ¶¶ 28–33, and for reimbursement, equitable contribution, and/or indemnification from Underwriters for its alleged breach of contract in the form of reimbursement of all amounts

expended or to be expended defending Court Street and Prospect Living for the Accident and the Suit, *id.* ¶¶ 34–46.

Underwriters has answered, asserting affirmative defenses including that Court Street and Prospect Living have filed to satisfy the conditions to coverage contained in Underwriters’ policy’s additional insured endorsements and that any liability was not caused, in whole or in part, by the acts or omissions of Underwriters’ named insured or anyone acting on its behalf in the performance of its ongoing operations for the purported additional insured. Dkt. No. 14 ¶¶ 50–51.

Underwriters’ proposed third-party complaint contains causes of action for a declaratory judgment and for breach of contract against Chubb and Illinois Union also arising from the Accident and the Suit. Dkt. No. 17-3 ¶¶ 17–25. The proposed third-party complaint alleges that Chubb/Illinois Union issued a policy to L&T, covering the time period of the Accident. *Id.* ¶ 8. It also alleges that the subcontract between MT and L&T required L&T to procure insurance naming, inter alia, MT, Court Street, Prospect Living, and “any other person or entity that [MT] is required to name” as additional insureds for claims arising out of L&T’s work pursuant to the subcontract on a primary and non-contributory basis. *Id.* ¶¶ 9–10. Underwriters alleges that MT tendered requests to Chubb/Illinois Union for defense, indemnification, and additional insured coverage for the Suit, *id.* ¶¶ 11–12, and that Chubb/Illinois Union then issued a late tender denial, *id.* ¶ 14. Underwriters claims that the delay in responding to MT’s tender waived Chubb/Illinois Union’s right to rely on any of its policy exclusions to deny coverage and that MT is entitled to defense and indemnification under the Chubb/Illinois Union policy. *Id.* ¶¶ 15–16. Underwriters seeks a declaratory judgment that Chubb/Illinois Union is obligated to defend, indemnify, and provide additional insured coverage to MT and that Chubb/Illinois Union is

obligated to defend, indemnify, and provide additional insured coverage to Court Street and Prospect Living pursuant to the Chubb/Illinois Union policy for the Suit primary to and without contribution from any insurance provided by the Underwriters. *Id.* ¶¶ 20–21. It also seeks reimbursement of all costs expended in defending MT under a breach of contract theory. *Id.* ¶¶ 22–25.

DISCUSSION

Federal Rule of Civil Procedure 14 provides that “[a] defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Fed. R. Civ. P. 14(a).

“Rule 14(a) provides a procedural mechanism whereby a defendant can have derivative, contingent claims against others not originally parties to the action adjudicated contemporaneously with the claims against it; it does not create new substantive rights against those other parties.” *HSBC Bank USA, N.A. v. Hunter Delivery Sys., Inc.*, 2010 WL 2598195, at * 5 (S.D.N.Y. June 28, 2010) (quoting *Gayle Martz, Inc. v. Sherpa Pet Group, LLC*, 651 F. Supp. 2d 72, 85 (S.D.N.Y. 2009)). An “impleader action must be dependent on, or derivative of, the main or third-party claim.” *Bank of India v. Trendi*, 239 F.3d 428, 438 (2d Cir. 2000). A third-party complaint under Rule 14(a) thus is appropriate where the third party’s liability is dependent upon the outcome of the main claim or the third party is potentially secondarily liable as a contributor to the defendant. *See Kenneth Leventhal & Co. v. Joyner Wholesale Co.*, 736 F.2d 29, 31 (2d Cir. 1984). The rule permits only a “narrow intrusion[] into plaintiff autonomy.” 3 James Wm. Moore, *Moore’s Federal Practice* § 14.03[1], at 14-9 (3d ed. 2022). “If the claim is separate or independent from the main action, impleader will be denied. . . . The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough.” 6A Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure* §

1510 (3d ed. 2020). “[A] motion to strike” a third-party claim also “should be granted where the claim is ‘obviously unmeritorious.’” *Hartford Fire Ins. Co. v. Cnty. Asphalt, Inc.*, 2002 WL 31654853, at *3 (S.D.N.Y. Nov. 22, 2002).

The Underwriters’ motion and third-party complaint fail to satisfy the requirements of Rule 14(a). It does not assert a claim that is derivative or dependent on the claim in the main action. The claim in the main action seeks a declaration that Underwriters is primarily liable, ahead of State, for the indemnification and defense costs of Church Street and Prospect Living. It essentially asserts a contract claim based on rights belonging to Church Street and Prospect Living derived from the Underwriters’ policy written to MT. It does not assert a claim against MT and does not allege that MT has breached any obligation it owes either to Church Street/Prospect Living or to State. The Underwriters’ third-party complaint, by contrast, asserts claims based on obligations owed to MT in connection with the policy that Chubb/Illinois Union wrote to L&T. It seeks indemnification for costs and liability owed by MT, not by Church Street or Prospect Living.

Although both complaints derive from the same underlying Claim, Accident, and Suit, they are entirely independent of one another. The allegation in the third-party complaint that Chubb/Illinois Union improperly denied the tender made by MT for indemnification and reimbursement of MT’s defense costs is in no way dependent upon the outcome of State’s claim against the Underwriters that Underwriters is required to pay the defense costs and to indemnify Court Street and Prospect Living. If Underwriters prevails in this action and this Court determines that Underwriters is not required to treat Court Street and Prospect Living as additional insureds under its Policy with MT, Underwriters will still be able to prosecute (and could prevail on) their claim against Chubb/Illinois Union for reimbursement of MT’s defense

costs and for indemnification of MT. The outcome of the main action will have no legal effect on the third-party claim. By the same token, if Underwriters loses the main action and the Court determines that Underwriters is required to treat Court Street and Prospect Living as additional insureds and to reimburse Court Street and Prospect Living for their costs and their liability, that too will have no bearing on whether Chubb/Illinois Union is liable to MT, and derivatively to the Underwriters, for MT's defense costs and indemnification. Accordingly, the third-party complaint is not "dependent on, or derivative of, the main or third-party claim." *Trendi*, 239 F.3d at 438.

The fact that Underwriters seeks a declaration that Chubb/Illinois Union is responsible to provide additional insured coverage to Court Street and Prospect Living is not sufficient to bring this action within the coverage of Rule 14(a). That request for relief is not supported by any allegation in the third-party complaint. While the third-party complaint alleges that Chubb/Illinois Union issued a policy to L&T and that L&T also entered into a subcontract with MT requiring it to procure insurance "naming, inter alia, MT Ironworks, Court Street, Prospect" and others as "additional insured," Dkt. No. 17-3 ¶¶ 8–10, the proposed third-party complaint does not allege that the Chubb/Illinois Union insurance policy, in fact, covered Court Street and Prospect Living as additional insureds. *Id.* The proposed third-party complaint also does not allege that any demand was made to Underwriters on behalf of Court Street and Prospect Living with respect to the purported obligations owed to those entities by Chubb/Illinois Union. Underwriters asserts that MT made a tender to Chubb/Illinois Union for MT's defense costs and for indemnification of MT. *Id.* ¶¶ 11–12. It does not assert that MT (or Underwriters) made a tender to Chubb/Illinois Union for coverage of the defense costs or indemnification of Court Street or Prospect Living. As noted, it alleges that "*MT Ironworks* is entitled to defense and

indemnification under the Chubb/Illinois Union Policy.” *Id.* ¶ 16 (emphasis added). Thus, even assuming MT (and Underwriters) have a meritorious claim against Chubb/Illinois Union for the costs and indemnification of MT, the third-party complaint asserts no basis upon which Underwriters—through the third-party complaint—could make Chubb/Illinois Union liable for any portion of the claim by State against Underwriters for the defense costs and indemnification of Court Street or Prospect Living.²

CONCLUSION

The motion for leave to file a third-party complaint is DENIED.

The Clerk of Court is respectfully directed to close Dkt. No. 17.

SO ORDERED.

Dated: September 29, 2022
New York, New York



LEWIS J. LIMAN
United States District Judge

² State claims Court Street and Prospect Living tendered the claim to Chubb/Illinois Union in July 2020, but Chubb/Illinois Union denied it on the grounds that Court Street and Prospect Living did not qualify as Additional Insureds and that the Suit was based on activities that fell outside the coverage of the policy, Dkt. No. 18-2, and State has chosen not to sue Chubb/Illinois Union as insurer for L&T, Dkt. No. 18 at 2.